

Marriage Savers

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How To Reform No Fault Divorce

Testimony to the Michigan House Policy Committee
Of Families, Children and Seniors
By Mike McManus, President of Marriage Savers
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No Fault Divorce

It is too easy to get divorced in America, due to "**No Fault Divorce**," that was first adopted by California in 1969 and quickly spread to most other states.

For decades if a person wanted a divorce, he/she would have to provide evidence that their partner was guilty of a major fault, such as adultery, abuse or abandonment. The court required such evidence because marriage was considered a solemn contract, voluntarily entered into by husband and wife before witnesses. However, in 1969 California passed **No Fault Divorce** which was designed to remove the acrimony of divorce proceedings by allowing one person to charge that the marriage had "irreconcilable differences." No fault had to be proven. Gov. Ronald Reagan signed America's first **No Fault Divorce** law in 1969. By 1975 nearly 50 states had passed No Fault.

A better name for **No Fault** is **Unilateral Divorce** because it enables one spouse to get a divorce without the consent of – and over the objections of their partner. In fact, four out of five unilateral divorces have been opposed by one spouse.

State law in Michigan and every other state pushes couples to divorce – rather than to reconcile. This is bad for couples, terrible for children, and costs taxpayers billions. Michigan's 36,000 divorces in 2013 cost taxpayers an average of \$25,000 per divorce or \$900 million – for just one year of additional divorces.

The results have been catastrophic. The number of divorces nationally had already nearly doubled in the turbulent 1960s from 390,000 in 1960 to 636,000 in 1969. However, as **No Fault Divorce** swept the country in the early 1970's, divorces nearly redoubled from 636,000 in 1969 to 1,189,000 by 1979. President Reagan later told his son, Michael, that his signing of the first **No Fault Divorce Law** was his "greatest regret" in public life. The number of divorces has remained above 1 million every year since. The annual numbers declined a bit for some years, but have begun increasing. According to Census they increased by 140,000 since 2005 to 1,150,000 in 2013.

Two additional reasons to oppose **No Fault Divorce** is that it is unconstitutional and unjust to children.

1. **Unconstitutional:** In my book, *How To Cut Divorce Rates In Half*, I argue that **No Fault Divorce** is unconstitutional.¹ *Both the 5th and the 14th Amendments guarantee that “no person be deprived of life, liberty or property without due process of law.”* In a divorce, both people lose **property**. Children lose the **liberty** of access to both parents, and one parent’s access to his children is typically limited to two weekends a month. That is a loss of **liberty** for the parent and children. Both husband and wife lose **years of life**, as do their children. A divorced man will live **ten years less** than a married man; a woman, **four years less**;² and their children, **five years less**. Thus, in a divorce all are losing life, liberty and property.

Furthermore, four out of five divorces are opposed by one spouse. Therefore, how can there be ‘**due process**’ if every divorce is granted?

Chief Justice John Marshall, America’s first Chief Justice, penned these eerily prescient words in an 1817 case:

When any state legislature shall pass an act annulling all marriage contracts, or allowing any party to annul it without the consent of the other, it will be time enough to inquire whether such an act be unconstitutional.

2. **Unjust to children:** Current law is profoundly unjust to children. Michael Reagan wrote about the divorce of his father, Ronald Reagan, and Jane Wyman:

Divorce is where two adults take everything that matters to a child – the child’s home, family, security, and sense of being loved and protected – and they smash it all up, leave it in ruins on the floor, then walk out and leave the child to clean up the mess.

Ironically, it was Michael’s father, as Governor of California, who signed America’s first **No Fault Divorce** Law 46 years ago in 1969.

When children of divorce reach adulthood, almost all cohabit and only 60% marry. They are also more likely to divorce, because they do not have an image of what a successful marriage is in their minds. Even those who avoid calamity find that their structure of childhood is inextricably altered by their parents’ divorce, leaving them with feelings of loss and loneliness, reports Elizabeth Marquardt in her 2005 book, *Between Two Worlds*. “Kids with divorced parents are kicked back and forth like a football,” she

¹ Mike McManus, *How To Cut America’s Divorce Rate in Half: A Strategy Every State Should Adopt*, forward by former Gov. Mike Huckabee, 2008, Marriage Savers, Potomac, MD 20854.

writes. "Growing up in two worlds creates endless and often painful complications for a child."

Four Strategies To Reform No Fault Divorce

Four types of reform ought to be considered with the goal that that *state law encourages couples to reconcile rather than divorce*:

1. More time before a divorce is granted:
2. Living under the same roof should be allowed to couples during the delay. It should be optional;
3. Education on the impact of divorce on children and to improve the couple's conflict resolution skills should be required;
4. More favorable treatment of the spouse opposed to divorce would persuade many unhappy spouses to work on restoring the marriage, rather than divorcing.

1. More Time

At present, America's divorce rate of 23% after five years of marriage is *triple* the 8% rate of Britain or France.² Why? If a British wife wants a divorce, but her husband is opposed, they must **wait five years** to get the divorce and **six years** in France. Five or six years is a lot of time for couples to reconcile. By contrast, 23 states including Michigan have a **ZERO** waiting period for divorce, or only 20-60 days. That allows no time for passions to cool and reconciliation to take place.

Only four states (Maryland, Arkansas, North and South Carolina) require a year before a divorce is granted. Of those, Arkansas requires a flat 18 month delay. If the divorce is contested, West Virginia requires a year, but none if uncontested. Washington D.C. requires a year if the divorce is opposed by one spouse, but only 6 months if uncontested. Both Virginia and Louisiana require a year if there are minor children, or 6 months if there are no children.

However, next door to Michigan is Illinois which requires a 2-year delay if the divorce is contested. If uncontested, Illinois allows a divorce in 6 months – but Illinois requires a 2 year delay, if opposed by one spouse. Pennsylvania's is similar: 90 days with consent, but 2 years, if opposed by one spouse.

Result: Illinois's divorce rate is 44.8% compared to Michigan's 60%. Pennsylvania's divorce rate is 47%. Clearly, Illinois and Pennsylvania, by requiring a two-year delay, allow couples more time to reconcile. And thousands of couples, where one spouse filed for divorce – were able to heal their marriage, rather than divorce. If Michigan had Illinois' divorce rate of 44.8%, there would have been only 28,800 divorces rather than Michigan's 36,000 divorces.

² Andrew J. Cherlin, *The Marriage-Go-Round: The State of Marriage and Family in America Today*, Alfred A. Knoff, 2009, New York, p.206.

Illinois and Pennsylvania come closest to the British and French requirement of 5-6 years. And In 2011, their divorce rates were two of the lowest divorce rates in America. They were about half of the average for 11 "Hot Head States" with no waiting or only 20-60 days: OK, NV, WY, ID, TN, KY, AK, FL, AL, MS, and CO.

The results of the Illinois and Pennsylvania laws offer evidence that ***If those "Hot Head" states adopted the IL or PA model, their divorce rates could be cut in half.***

We at Marriage Savers, Americans for Divorce Reform and the Divorce Reform Coalition recommend that all state laws require:

- **A minimum delay of one year**
- **A delay of two years, if the divorce is contested, or if there are children**

These are not unreasonable changes. However, what I'm calling for is much easier said than done. Only one state has lengthened the time requirement. Louisiana used to require only a 6 month delay, but now requires a year if the couple has children. Reformers in two states: University of Minnesota Professor Bill Doherty and Pastor Greg Griffin in Georgia have invested three years trying to talk their state legislatures into requiring a year, in the case of Minnesota (up from zero), and 11 months in the case of Georgia (up from 30 days). In 2015, both Doherty and Griffin gave up on persuading their Legislatures to increase the time requirement.

Three states reduce time requirements. Sadly, more states are going backwards. Instead of requiring more time before a divorce, several have **reduced** time requirements. New Jersey used to require an 18-month delay if the divorce was contested, but now requires only a flat 6 month postponement for the divorce. New York used to require a year, but now requires only 6 months. Maryland required a minimum of a year and two years if contested, but recently eliminated the two-year rule if contested. I predict that NJ, MD and NY will all see their divorce rates rise as a result. The divorce lawyers have won. Their citizens – particularly, their children – have lost big time.

Therefore, Marriage Savers recommends **states require a one-year minimum delay before a divorce is granted, and two years, if the divorce is contested or if there are children.**

State government should be encouraging couples to reconcile, not divorce.

2. Living Under The Same Roof

At present, all states with waiting periods require married couples to move apart. Why? The shock of having to pay for two households on the same salaries that were supporting one – could prompt divorcing couples to reconsider. I asked a friend whose husband pushed for a divorce, “How it is going?” She replied on the phone, “We have sold the house and are moving out. I have to pack up all the things in my old house and then unpack them at the other. He’s very angry about it.”

“Why?” I asked. “Well, he now has to pay child support and spousal support, plus the cost of his new apartment.”

“Well, he asked for the divorce. Is he reconsidering?” No, I was told. She later learned he was having an affair with a younger woman.

Thus, the hope that the higher costs would prompt divorcing couples to reconsider – is unrealistic. A more important problem when divorcing couples move apart is that Partner A or B begins dating someone else. Again, that reduces the likelihood of reconciliation.

Therefore, we at Marriage Savers propose that when a divorce is filed, that the couple be given the **option** of remaining under the same roof. That would greatly increase the likelihood of reconciliation. The temptation of dating someone else would be greatly lessened. And children would continue to have full access to both of their parents.

It’s a Win-Win-Win situation:

- More couples would save their marriages, to their benefit and to that of their children.
- The high family costs of setting up two households would be avoided.
- Taxpayers would benefit from lower costs of Medicaid, food stamps, welfare, etc. as fewer couples would divorce.

Allowing couples to remain under the same roof would clearly promote reconciliation, not divorce.

3. Education

Prof. Bill Doherty of the University of Minnesota has proposed a divorce reform bill (along with Leah Ward Sears, former Georgia Chief Justice) called **Second Chances** that would require any couple with children to take a four-hour course on the impact of divorce on kids **before divorce papers can be filed**. Hopefully that would persuade many couples to reconcile. The couple can take the course together or separately, but each person has to be able to answer some basic questions about the harm of divorce to children, before divorce papers will be accepted by the state – if the bill passes the Legislature.

. Alternatively, consider a very similar bill requiring parental education before filing for divorce by Rev. Greg Griffin in Georgia with the wonderful title, **The Children's Hope for Family Life Act**. Children do hope for a family with a married mother and father. Sadly only 46% of American teenagers are so blessed, according to research by Dr. Patrick Fagan of the Family Research Council.³

What can parents learn from such a course? First, that a child of divorce is three times more likely to become pregnant as a teenager or to be expelled from school as a child from an intact home, five times as apt to live in poverty and six times more likely than those with married parents to commit suicide, and 12 times more apt to be incarcerated. When children of divorce reach adulthood, only 60% marry and they are more likely to divorce⁴ – than children from intact homes.

No parent would like to push their children into such disasters, but an unhappy spouse is not thinking about his or her children. They are only thinking about their pain – or perhaps a younger woman to replace the old model. Information about the likely disasters that their children will face can help nudge an unhappy couple to go to a Marriage Encounter or Retrouvaille to give their marriage a much needed booster shot.

My second educational suggestion is that states requiring a year's delay before a divorce (or 6 months or even 90 days⁵) – that the delay's time should be used to **require couples to take a course to improve their skills of communication and conflict resolution**. As President of Marriage Savers, I am often asked what issues cause most divorces: arguments over money, in laws, children, etc. My answer usually surprises people. "All couples argue over such things, but the successful couples do so with respect and gentle words. Those who scream a lot or who give each other silent treatments, which show disrespect – are headed toward divorce.

Fortunately, skills of communication and conflict resolution **can be taught in a day**. PAIRS is course that teaches those skills. Another is called PREP. Teaching how to resolve conflict with respect is a central component of the training Marriage Savers has given to thousands of Mentor Couples. That's a major reason church and city divorce rates fall.

The main point which must be made with state legislators is that "Our high divorce rate could fall if the state added education components – before a divorce can be filed, and during the delay before the divorce is granted.

State law should promote couple reconciliation not divorce.

³ Patrick F. Fagan and Christina Hadford, "The Fifth Annual Index of Family Belonging and Rejection," MARRI Research (Marriage & Religion Research Institute) of the Family Research Council, February 12, 2015.

⁴ Pat F. Fagan and Robert Rector, Heritage Foundation Backgrounder, "The Effects of Divorce on America, 2000.

⁵ New York, New Jersey, California, Vermont, Delaware require a 6 month delay. A 90 day delay is required by Iowa, Oregon, Washington State, Utah, Colorado,

4. Financial Disincentives & Shared Custody

No Fault Divorce is unfair to the spouse who wants to preserve the marriage. Proposed by David Usher, of the Center for Marriage Policy⁶ in St. Louis, Missouri is a bill which would identify the spouse trying to save the marriage as the **Responsible Spouse** who would get two advantages in an unwanted or contested divorce:

- **70% of marital assets**, instead of the usual 50-50 split.
- **50% of child custody**. If there is a child who is 4 years old, he/she would spend the next seven years with the mother, and at age 11 would move in with the father for seven years. If the child is 10, it would spend 4 years with the mother, and 4 more years with the father.

If there were a more just law, giving the person trying to preserve the marriage, actual benefits – more child custody time and more family assets – the committed spouse would have leverage to persuade many unhappy mates to work to improve the marriage.

U.S. Divorce Rate Triple Britain and France

Every knowledgeable person on family policy I have asked was unaware that the U.S. divorce rate is triple that of Britain or France, or four times greater than Italy, or six-fold higher than Spain. “Ah,” say some of them, “but they marry at lower rates.” That is true. According to Andrew Cherlin’s book, *The Marriage-Go-Round*, “a higher proportion of Americans marry than in most other Western nations: 84 percent of American women are predicted to marry by age forty. In contrast, the forecast drops to 70 percent in Sweden and 68 percent in France.”

However, marriages are far more fragile in the U.S. than elsewhere. After 5 years of marriage, 23% of Americans have divorced compared to these figures for other countries:

Australia	9%
Canada	10%
Belgium	5%
France	8%
Great Britain	8%
Italy	3%
Spain	4%
Norway	9%
Sweden	11%
United States	23%

⁶ David Usher, President of the Center for Marriage Policy, can be reached at 314 452-2297.

To put it differently, American children born to married or cohabiting parents are more likely to see their parents' marriage break up than are children in most other countries. About 40% of U.S. kids experience a parental breakup by age 15 – compared to 30 percent in Sweden, and in the low twenties in France and Australia. Three-quarters of children born to cohabiting parents in America experience exceptionally high rates of parental separation. "About three-quarters no longer lived with both parents at age 15," writes Cherlin. "In fact, children born to *married* parents in the United States were more likely to experience their parents' breakup than were children born to *cohabiting* parents in Sweden."

Model Legislation to Reform No Fault Divorce

1. Parental Divorce Reduction Act (PDRA)

I had a minor role in helping create a **Coalition for Divorce Reform** (www.divorcereform.info) which has created model legislation that is being considered by some states (GA, MN, TX) to persuade state legislatures to reform No Fault Divorce. The Coalition's bill requires an **Eight month Period of Reconciliation and Reflection** for those seeking a divorce. If they have children, the model urges states to require both parents to attend classes on the impact of divorce on kids *before filing*, as well as attend marriage education classes during the months of delay.

As noted above, this would be a big change for 23 states, such as Michigan and Florida that require **no waiting for a divorce**. All states require divorcing couples to move apart, which encourages one or both spouses to date. **The Parental Divorce Reduction Act** would allow parents to remain under the same roof, encouraging reconciliation. PDRA has been a model legislative vehicle that has been picked up for debate by four states. To see it, go to www.divorcereform.us.

2. Four States Begin Reform Efforts: NC, MN, GA, TX

At the invitation of the **North Carolina Family Policy Council**, I wrote an article for its quarterly magazine, *Family North Carolina* in which I proposed several reforms, which were based in part on PDRA. Sen. Austin Allran and two other senators introduced a **Healthy Marriage Act** in which:

- **NC would require a two-year waiting period** before a divorce is granted – America's longest delay.
- **Allow divorcing couples to live under the same roof**, if desired to increase odds of reconciliation.
- **Offer two unprecedented educational elements:**
 1. If the couple has children, require they take a four-hour course on the impact of divorce on kids **before divorce papers can be filed**.
 2. During the waiting period, NC, GA and TX would require they take a four-hour course on how to improve their communication and **conflict resolution** skills.

However, the bill failed to include Exceptions for cases involving physical violence, and was attacked on that ground, and on the proposed flat two-year delay, as the longest in America. Sen. Allran retired in 2015, and at this writing it is not clear whether the bill will be reintroduced.

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In Georgia's **Children's Hope for Family Life Act**, House Bill 680, and in Minnesota's **Second Chances** bill, couples with children would have to take course on the impact of divorce on kids, **before** divorce papers can be filed.

An earlier version of those bills required (in GA) or recommended (MN) that couples with children aged 17.5 years or less, to also participate in 8 hours of educational skill-building teaching better communications and conflict resolution skills. However, that element was dropped in 2015.

Texas HB 3612 & HB 2985 would also require couples with children to take a “marriage education course on the many potential effects divorce would have of their children” **prior to filing for divorce**. Jonathan Saenz, who leads a **Family Policy Council** called **Texas Values**, says the bills for this educational element and for lengthening the time for a divorce were very well received by the three House committees who considered them in 2014. They were re-introduced in 2015.

Exemptions are recommended for cases involving domestic violence, and for couples who have lived apart for more than five years in the case of Georgia.

Pastoral Strategy to Cut Divorce Rates: Community Marriage Policies

Community Marriage Policies: In addition to these legal reforms, which require a change in law, another way to reduce the divorce rate - is to create a local Community Marriage Policy. Marriage Savers that I direct has worked with 10,000 churches in 230 cities to take steps to better prepare couples for a lifelong marriage, to enrich existing ones, save those in crisis, to reconcile separated couples, and help those with stepchildren to succeed in 80% of cases, rather than divorce at a 70% which is the norm for Stepfamilies.

Individual state legislators might be interested in this initiative planted in their communities, which has been taken in such Michigan cities as Adrian, Charlevoix, Coldwater, Grand Rapids, Harbor Springs, Livonia, Port Huron, Rockford and Traverse City with the help of **Marriage Savers**. For example, the Grand Rapids divorce rate fell 11.1% in five years. On average, city/county divorce rates fall 17.5% in seven years, according to an independent study by the Institute for Research and Evaluation. How? Marriage Savers trains clergy and couples in healthy marriages to be Mentor Couples who help other couples be successful. We train in five proven interventions at different stages of the marital life cycle:

1. **Prepare couples** for a healthy, lifelong marriage by requiring them to take a premarital inventory, **PREPARE-ENRICH**, that asks couples to respond to 150 statements such as:
 - When we are having a problem, my partner often refuses to talk about it.
 - Sometimes I wish my partner were more careful about spending money.
 - I am concerned that my partner is interested in viewing sexually explicit materials.

We have written a **Marriage Savers PREPARE/ENRICH Couples Workbook** to be used with the P/E inventory that offers more than a dozen exercises designed to help Mentor Couples to meet with individual premarital couples to discuss differences revealed by the inventory. The Optional Premarital Sexual Covenant is included plus other communication exercises to help Mentors train equip mentorees with proven ways to resolve conflict in a mutually satisfying and respectful way. It is only \$4.95, and is downloadable.

2. **Enrich existing marriages.** Since all marriages run down over time hold an annual event designed to rekindle the love of married couples. For example, **10 Great Dates** is a book and DVDs used by hundreds of thousands of churches. Couples come to church on 10 evenings, watch a brief video on such topics as “Resolving Honest Conflict” and “Becoming an Encourager.” Couples then go on a 90-minute date to discuss the issue, prompted by questions in their paperback. It is fun and non-threatening. No one drops out. There are many other enrichment packages such as **Love & Respect, The Art of Marriage, Fireproof, Five Love Languages**, etc.

3. **Restore 4 of 5 troubled marriages** with trained “back-from-the-brink” Mentor Couples whose own marriages once nearly failed. A couple who survived adultery has something to say to a couple in current crisis over infidelity: “This is what we did to restore trust.” That’s exactly what the other couple needs to hear. Most pastors make a major mistake with couples in crisis by sending them to therapists or counselors which “is associated with at least three-times higher odds of separation and divorce,” according to a major study.^[1] Marriage Savers offers training for “back-from-the-brink” Mentor Couples.
4. **Help the separated to reconcile** with a 12-week course, **Marriage 911**, taken by the committed spouse with a friend of the same gender, the goal of which is to help that person grow personally and spiritually so much that they often win back an errant mate. The **Marriage 911 Workbook** and **Support Partner Handbook**, which saves half of marriages.
5. **Help stepfamilies**, who normally divorce at a 70% rate, to save 80% of them by creating **Stepfamily Support Groups** where stepcouples learn from each other how to be better partners and parents. A kit includes a Manual on how to create a Stepfamily Support Group, a paperback, *Willing to Try Again*, and a CD.

Marriage Savers goes beyond these pastoral answers with a proven technique to plant them in thousands of churches: **Community Marriage Policies (CMPs)** jump-started these reforms in 10,000+ churches in 230 cities. Result: CMPs cut city-wide divorce and cohabitation rates. Based on an independent study by the Institute for Research and Evaluation of the first 114 cities with CMPs, **divorce rates fall 17.5% on average.**^[7] Based on Institute estimates, at least 100,000 divorces have been averted by Community Marriage Policies, which Marriage Savers has planted in 230 cities in 44 states (plus 4 foreign countries).

Nearly a tenth of CMP cities cut divorce rates in half such as Austin, Kansas City, KS, Salem, OR, Modesto, CA and El Paso. El Paso, which slashed its divorce rate by a stunning 79.5%, has been ***the safest large city in America for the last four years with the lowest crime rate***. Why? Most children are raised by married parents. (In 2010 there were only 5 murders in El Paso, a city of 665,000 vs. 132 murders in Washington D.C., a smaller city.) Austin, TX which cut its divorce rate by 50%, is America’s 4th safest city.

Cohabitation rates fell by one-third in CMP cities compared to similar cities with no CMP in the same states. Marriage rates also increased in some cities, such as Modesto which doubled its marriages from 1,300 a year to 2,600 – though that was partly due to an increase in population. Evansville, IN increased its marriage rate by 16% in 8 years, while the US marriage rate was plunging.

Marriage matters.

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- ^[1] Mike McManus, *How To Cut America's Divorce Rate in Half: A Strategy Every State Should Adopt*, forward by former Gov. Mike Huckabee, 2008, Marriage Savers, Potomac, MD 20854.
- ^[1] Clare M. Kamp Dush, Catherine L. Cohan and Paul R. Amato, "The Relationship Between Cohabitation and Marital Quality and Stability: Change Across Cohorts?" *Journal of Marriage and Family* 65 (August, 2003.).

^[2] Andrew J. Cherlin, *The Marriage-Go-Round: The State of Marriage and Family in America Today*, Alfred A. Knoff, 2009, New York, p.206.

^[3] Patrick F. Fagan and Christina Hadford, "The Fifth Annual Index of Family Belonging and Rejection," MARRI Research (Marriage & Religion Research Institute) of the Family Research Council, February 12, 2015.

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^[6] David Usher, President of the Center for Marriage Policy, can be reached at 314 452-2297.

[1] Steven L. Nock, Laura A. Sanchez and James D. Wright, *Covenant Marriage: The Movement To Reclaim Tradition In America*, 2008 Rutgers University Press, p. 123.

[2] Paul James Birch, Stan E. Weed and Joseph Olsen, "Assessing the Impact of Community Marriage Policies on County Divorce Rates, *Family Relations*, 2004, 53 495-503. Available on www.MarriageSavers.org